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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DUSTIN TAYLOR JEFFRIES, Defendant and Appellant.	G042058 (Super. Ct. No. 06HF2459) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly and Carla M. Singer, Judges. Affirmed in part and reversed in part.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Raquel M. Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The amended information charged defendant Dustin Jeffries with the deliberate and premeditated attempted murder of Donald McLachlan (Pen. Code,[1] §§ 187, subd. (a), 664, subd. (a), count one), aggravated assault on McLachlan (§ 245, subd. (a)(1), count two), and active participation in a criminal street gang (§ 186.22, subd. (a), count three) on April 23, 2006. Defendant was also charged with possession of a deadly weapon (§ 12020, subd. (a)(1), count four), possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a), count five), possession of heroin (Health & Saf. Code, § 11350, subd. (a), count six), active participation in a criminal street gang (§ 186.22, subd. (a), count seven), felon in possession of a firearm (§ 12021, subd. (a)(1), count eight), and felon in possession of ammunition (§ 12316, subd. (b)(1), count nine) on December 14, 2006. The information alleged defendant personally used a deadly weapon (§ 12022, subd. (b)(1)) in committing the attempted murder and personally inflicted great bodily injury (§ 12022.7, subd. (a)) in committing the attempted murder and aggravated assault, defendant committed the offenses charged in counts one, two, four, eight, and nine for the benefit of, at the direction of, and in association with the Orange County Skins (OCS), a criminal street gang (§ 186.22, subd. (b)(1)),[2] and defendant had served two prior separate terms in state prison (§ 667.5, subd. (b)).

The jury found defendant guilty on counts one through seven and found true each of the weapon, great bodily injury, and gang enhancement allegations. In a separate proceeding, the court found defendant served two prior prison terms. The court sentenced defendant to an indeterminate term of life in prison with the possibility of parole on count one plus a six-year consecutive determinate term, consisting of one year for the personal use of a deadly weapon enhancement, plus three years for the great

[1] All statutory references are to the Penal Code unless otherwise stated.

[2] The trial of counts eight and nine and the gang enhancement alleged in connection with each count were ordered bifurcated from the trial on the remaining counts. Counts eight and nine were subsequently dismissed on the prosecutor's motion.

bodily injury enhancement, and one year for each of the two state prison priors. Terms on the remaining counts were either ordered to run concurrently or stayed pursuant to section 654. The gang enhancement found in connection with count one was stricken for sentencing purposes and the gang enhancement found in connection with count four was ordered to run consecutively to the two-year term imposed on count four and concurrently with the life term imposed on count one.

Defendant appeals, contending the evidence is insufficient to sustain the gang enhancement findings in connection with the attempted murder and assault on April 23, 2006, and the possession of an illegal weapon, a modified baseball bat, on December 14, 2006. He further contends the trial court erred in failing to provide a special instruction to the effect that the jury should not consider the CALCRIM standard instruction on motive (CALCRIM No. 370 [the prosecution need not prove motive]) in reaching verdicts on the gang enhancements. He also requests we review the sealed affidavit in support of the search warrant in this matter to determine whether the affidavit demonstrated probable cause to issue the search warrant. We agree the gang allegation in connection with count four is not supported by substantial evidence and otherwise affirm.

I

FACTS

We present the facts in the light most favorable to the judgment in accord with established principles of appellate review. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Additional facts appear where necessary in the discussion below.

April 23, 2006 Incident

Donald McLachlan's Testimony

Donald McLachlan has associated in the past with members of the prison gang Nazi Low Riders (NLR) and has knowledge "of the world of gangs," including Public Enemy Number One (PENI). McLachlan testified that in addition to PENI and

NLR, there were other skinhead gangs in Costa Mesa, including Orange County Skinheads (OCS) and United Society of Aryan Skinheads (U.S.A.S.).

McLachan believed he had displeased members of the PENI gang because his name appeared in a police report prepared in a murder investigation. Gangs expect members to invoke their *Miranda* rights when questioned by police, but McLachlan spoke to the police. According to McLachlan, his statement was inaccurately reported. As a result, he was concerned about PENI's death squad. This did not cause him to "live in a state of paranoia" daily, but his concern was the reason he was in fear for his safety on the night of April 23, 2006.

McLachlan was in his brother's garage on 18th Street in Costa Mesa that night. A friend of his, April Davis, brought him methamphetamine. While preparing the drug for injection, he looked up and saw "a bunch of unfamiliar faces,"possibly seven to 10, had entered through the side door. Because McLachlan thought he was on the wrong side of PENI, he felt threatened by the presence of the intruders. Seeing people in the garage "definitely wasn't right." McLachlan immediately "advanced on them" in an attempt to "go straight through them" and leave the garage. He felt hands on him as he rushed through the group inside the garage and "a couple stragglers" on the sidewalk outside. Running through the alley, McLachlan realized he had been stabbed on the right side of his chest. He believes he was stabbed because members of OCS, "a PENI farm team,"[3] "would love to be PENI."

Costa Mesa Police Officer Brent McKinley showed McLachlan a photo lineup containing defendant's photograph. McLachlan identified defendant's photograph and said, "Jeffries was the first one through the door."

[3] In the hierarchy of White supremacist gangs, the Aryan Brotherhood "sits at the top, PENI [is] below them and OCS would be [slightly] below PENI."

Michele Benabou's Testimony

Benabou testified under a grant of immunity. On April 23, 2006, Benabou and her friend April Davis went to a parking lot where they met with others for the purpose of retrieving a painting Benabou mistakenly believed McLachlan stole from her residence. "Damage,"[4] "Lefty," defendant, who is also known as "Crash," defendant's wife, and five or more other males, including two of defendant's roommates were present. The group drove to where McLachlan was staying on 18th Street. Benabou told Davis to go in first and leave the door open. Benabou entered about a minute after Davis. Then defendant, Lefty, Damage, and two others entered. McLachlan stood up, ran past Benabou and out the door. The males ran after him.

Although not true, Benabou told people a member of PENI, Nick Rizzo,[5] was her husband. In her testimony, she said defendant told Rizzo: "I was assistance for your wife last night and she needed me and I had her back." Defendant said he took care of McLachlan as a present for Rizzo because of the feud between PENI and OSC. Defendant said he was "smashing OCS" to make a truce for his people.

Caleb Mezen's Testimony

Defendant's roommate Caleb Mezen testified under a grant of immunity. Mezen said defendant was "from" OCS and U.S.A.S. Mezen, was a potential member, a "prospect," of U.S.A.S. Defendant was his mentor. Mezen was to learn "how to become a member," which included committing crimes. According to Mezen, defendant was a member of U.S.A.S. in April 2006, and was no longer with OCS.

Mezen was in the group that met in the parking lot. He did not know the purpose of the meeting until he got there. He heard a stolen painting mentioned and that

[4] The gang expert testified Ronald Bray is Damage, Ian Ashby is Lefty, and both are OCS gang members. It appears "Damaged" and Damage are one in the same person.

[5] It appears Nick Rizzo and Dominic Rizzo are the same person.

they were going to get it back. Damaged and Lefty were there. Mezen knew Lefty was a member of OCS and as far as Mezen was concerned, Lefty was in a leadership role that night. Mezen also knew there was a "green light" on McLachlan. A green light means "[i]f you see him you're supposed to attack the person." Everybody at the meeting knew about the green light. At least three people were armed with knives. Mezen thought his involvement in the incident was an initiation into U.S.A.S.

Dominic Rizzo's Testimony

Rizzo said he and another "ran" PENI in 2006. According to Rizzo, OCS is loosely aligned with PENI. He was aware McLachlan had talked to the police about a murder, but he did not consider McLachlan a rat and McLachlan was not on the PENI "hit list," a list of individuals to be attacked. Presumably "hit list" and "green light" mean the same thing.

When questioned by police, Rizzo told the officer defendant said he "ran a pass at [McLachlan]" and that "we poked this f. . . dude." Rizzo believed defendant was with U.S.A.S.

The Gang Expert's Testimony

James Karr is a member of the Orange County Sheriff's gang enforcement team. He testified as a gang expert about OCS's roots, formation, membership, predicate acts, and primary activities, including assault with weapons, sale of controlled substances, and vehicle theft. Karr opined defendant is an active participant in OCS. He reached this conclusion after considering defendant's tattoos and items found in defendant's residence, including photographs of known OCS gang members, address books, white racist literature, a mirror inscribed with gang symbols, a scrapbook with OCS on the cover and containing a drawing of a woman with OCS on her shoulder, a code key to translate encrypted letters, and a small blue planner with "Crash Dummy" and "714 Skins" on the cover.

December 14, 2006

Costa Mesa Police Officer Kevin Westman participated in the December 14, 2006 search of defendant's residence. Between the nightstand and the bed in defendant's bedroom, Westman found "a shortened Louisville Slugger baseball bat. It appeared that it had been cut down. The knob on the bat had been screwed back into the handle . . . ." The bat had "Runic-type writing on it."[6] Police also found a number of replica firearms, a loaded and fully operational .22-caliber long rifle, ammunition, a "commemorative Nazi-type dagger," a suitcase full of U.S.A.S. pamphlets and patches, Nazi flags, and a small bindle of tar heroin.

II

DISCUSSION

A. *Sufficiency of Evidence*

Section 186.22, subdivision (b)(1) provides an enhancement for "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ." Defendant contends the evidence is insufficient to support the gang enhancements. Specifically, defendant contends the evidence does not show the stabbing and his possession of a club eight months later were committed for the benefit of OCS, as opposed to U.S.A.S., a gang Karr and Westman each testified does not qualify as a criminal street gang.

"'In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could

[6] The runic alphabet consists of "angular characters [probably] derived from both Latin and Greek and used for inscriptions and magic signs by the Germanic peoples from about the 3d to 13th centuries and [especially] by the Scandinavians and Anglo-Saxons." (Webster's 3d New Internat. Dict. (1993) p. 1989.)

find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Steele* (2002) 27 Cal.4th 1230, 1249.) We must accept all assessments of credibility made by the trier of fact, then determine if substantial evidence exists to support each element of the enhancements. (See *People v. Carpenter* (1997) 15 Cal.4th 312, 387.) We presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We may reverse for lack of substantial evidence only if "'upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) "The standard of review is the same when the prosecution relies mainly on circumstantial evidence. [Citation.]" (*People v. Valdez* (2004) 32 Cal.4th 73, 104.)

1. *The Stabbing Incident (Counts One and Two)*

There was evidence defendant was a member of OCS at the time of the stabbing. In fact, defendant was convicted of being an active participant in OCS on April 23, 2006. Defendant does not challenge that conviction. There was, however, additional evidence indicating defendant had left OCS and was a member of U.S.A.S. in April 2006. Karr knew defendant was holding himself out as the secretary of U.S.A.S. Karr was also aware defendant had been attacked while in custody and that the attack had been ordered by an inmate aligned with the Aryan Brotherhood because defendant was associated with U.S.A.S.

Apparently based upon these and other facts showing defendant's participation in U.S.A.S., defendant contends "the prosecution [was required] to prove that in stabbing McLachlan . . . , [defendant] acted for *the benefit of the OSC*." (Italics added.) However, "specific intent to *benefit* the gang is not required." (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.) Subdivision (b) of section 186.22 "is satisfied if the crime was 'committed . . . in association with a[] criminal street gang, with

the specific intent to promote, further, or assist in . . . criminal conduct by gang members . . . .' [Citation.]" (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1332.)

Defendant, a member of OCS, went to the garage to confront McLachlan with a number of other individuals, at least two of whom, Damage and Lefty, were also OCS members. Besides defendant, at least two others were armed with knives. According to the gang expert, OCS members "have a huge tendency to use knives in a lot of their assaults."

All the members of the group knew there was a green light on McLachlan. After the stabbing, defendant told Benabou he did it because of the war between PENI and OCS, and he wanted Rizzo to know about his performance. In addition, Karr opined defendant was an active participant of OCS and U.S.A.S. Based upon a hypothetical question tracking the evidence relating to the April 23, 2006 incident, Karr concluded defendant's conduct was consistent with a crime "committed . . . in association with the Orange County Skinheads criminal street gang."

"'The evidence that defendant knowingly committed the charged crimes in association with two fellow gang members was sufficient to support the jury's findings on the gang enhancements . . . .' [Citation.] '[T]he jury could reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members.' [Citation.]" (*People v. Martinez*, *supra*, 158 Cal.App.4th at p. 1332.) The sufficiency of the evidence showing the crimes were committed in association with other OCS members "is not altered by the existence of other evidence" tending to show defendant was a member of U.S.A.S. at the time of the stabbing. (*Id*. at p. 1331.) The fact "that there is conflicting or contrary evidence is only a factual and credibility determination performed by the jury. We may not take it into consideration but only decide if there is enough evidence supporting the finding, and the record reflects sufficient evidence to affirm the . . . enhancement." (*Id*. at p. 1334.)

Defendant committed the attempted murder and aggravated assault in association with other OCS gang members, Lefty and Damaged. The evidence shows defendant intended to commit the crimes in association with gang members. Accordingly, we conclude the evidence supports the gang enhancement finding in connection with counts one and two. We turn next to the gang enhancement finding attached to count four.

2. *Possession of a Deadly Weapon (Count Four)*

Defendant does not contest his conviction for possession of the modified Louisville Slugger baseball bat (club) on December 14, 2006, or his conviction for being an active participant in OCS on that same date. He contends, however, the gang enhancement attached to the club possession is not supported by sufficient evidence. We agree.

Immediately after Karr gave his opinion that the facts from the stabbing incident are consistent with the stabbing having been committed in association with OCS, the prosecutor asked Karr the following hypothetical question relating to defendant's possession of the club eight months later: "Let's say we got the same act of [an] OCS participant who also is trying to marshal up locals on the street gangs over to U.S.A.S., and let's say some about eight months later after this stabbing he is found to be in possession of a club which is made from a sawed-off Louisville Slugger bat that's obviously way [too] short to use in any organized athletic games, sporting some U.S.A.S. markings located in a bedroom in his home which contains other weapons and drugs . . . right next to a nighstand where some of the controlled substances, albeit in personal use quantities, are located. . . . [¶] . . . [¶] Would the possession of that club be consistent with a crime for the benefit [of], at the direction [of], or in association with Orange County Skinheads?"

Karr said it would. He concluded the possession "shows a level of commitment to the gang culture. If [defendant] just went out and carried out the assault he is going to need some sort of self-protection if anybody comes back at him. Also, you have the more tattoos promotes and furthers the conduct or criminal conduct of the Orange County Skins because he's permanently marking the bat or he is altering the bat and permanently marking it also." Karr said the conduct was consistent with an intent to promote, further, or assist in criminal conduct, for the same reasons.

"A gang expert's testimony alone is insufficient to find an offense gang related. [Citation.] '[T]he record must provide some evidentiary support, other than merely the defendant's record of prior offenses and past gang activities or personal affiliations, for a finding that the *crime* was committed for the benefit of, at the direction of, or in association with a criminal street gang.' [Citation.]" (*People v. Ochoa* (2009) 179 Cal.App.4th 650, 657.)

Karr offered three reasons for concluding possession of the club was "consistent with a crime for the benefit [of], at the direction [of], or in association with" OCS and is "consistent with conduct intending to promote, further, [or] assist in criminal conduct." First, defendant had committed an assault on McLanchlin approximately eight months earlier and would need the bat for "self-protection if anybody comes back at him."

In *In re Frank S.* (2006) 141 Cal.App.4th 1192, a police officer stopped the minor when he ran a red light on a bicycle. A search of the minor revealed a small bindle of methamphetamine, a knife, and a red bandana. The minor told the officer he "needed the knife for protection against 'the Southerners' because they feel he supports northern street gangs." (*Id.* at p. 1195.) A gang expert agreed the minor possessed the knife for protection. According to the expert, however, the minor's possession of the knife benefited the Nortenos gang because "it helps provide them protection should they be assaulted." (*Id*. at p. 1196.) On appeal, the minor contended the gang enhancement

attached to the knife charge was not supported by sufficient evidence he had the specific intent "promote, further, or assist in any criminal conduct by gang members." (*Ibid*.) The appellate court agreed, concluding "here nothing besides weak inferences and hypotheticals show the minor had a gang-related purpose for the knife." (*Id*. at p. 1199.) The prosecution had not presented any evidence the minor "had any reason to expect to use the knife in a gang-related offense." (*Ibid*.) The same is true here. There was no evidence defendant ever took the club with him on any OCS gang-related outing or even that he ever took the club out of his bedroom. Karr testified defendant needed the club for self-protection in case someone attacked him because of what defendant had done back in April 2006. A gang member's mere possession of a weapon for self-protection, without more, does not support a gang enhancement alleged in connection with that possession.

Next, Karr stated the presence of the club indicates the defendant is "committed to the gang culture." This does not weigh in favor of the enhancement either. A crime "may not be found to be gang-related based solely upon a perpetrator's criminal history and gang affiliations." (*In re Frank S., supra*, 141 Cal.App.4th at p. 1195.) Saying a defendant is committed to the gang culture is just another way of saying he is a gang member and has gang affiliations, albeit strong ones. Moreover, the enhancement is based upon a defendant committing an offense "with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ." (§ 186.22, subd. (b)(1).) The expert offered no example of how possession of the club could promote, further, or assist in any criminal conduct by criminal street gang members.

Lastly, Karr said the tattooing or permanently marking the club supports his conclusion. Arguably, if the club bore OSC markings, that might be a fact worthy of consideration. However, as was brought out on cross-examination, there were no OCS markings on the club. The only markings were U.S.A.S., a group that does not qualify as a criminal street gang. The expert failed to explain how marking the club with some

other group's name indicated an intent to promote, further, or assist OSC. Accordingly, we conclude the evidence does not support the gang enhancement in connection with count four.

B. *Jury Instruction*

The court instructed the jury pursuant to CALCRIM No. 370: "The People are not required to prove that the defendant had a motive to commit any of the crimes charged. In reaching your verdict you may, however, consider whether the defendant had a motive. Having a motive may be a factor tending to show the defendant is guilty. Not having a motive may be a factor tending to show the defendant is not guilty." Relying upon *People v. Maurer* (1995) 32 Cal.App.4th 1121 (*Maurer*), defendant asserts it was prejudicial error to so instruct the jury without further instructing the motive instruction does not apply when the jury considers the section 186.22, subdivision (b)(1) gang enhancements. In other words, defendant contends a jury cannot find a gang enhancement true unless the jury finds the underlying crime was gang motivated.

"[M]otive is not an element of any crime." (*People v. Daly* (1992) 8 Cal.App.4th 47, 59.) *Maurer* dealt with the one exception to the rule. Maurer was charged with violating section 647.6. That section punishes individuals who engage in prohibited conduct "motivated by an unnatural or abnormal sexual interest in children." (§ 647.6, subd. (a)(2).) The trial court in *Maurer* properly instructed the jury that Maurer could only be found guilty of the charges if his conduct was "motivated by an unnatural or abnormal sexual interest in [the child victim]." (*Mauer*, *supra*, 32 Cal.App.4th at p. 1125.) However, the court also instructed the jury that "'Motive is not an element of the crime charged and need not be shown.' [Citation.]" (*Ibid*.)

Recognizing the general rule, the *Maurer* court declared "section 647.6 is a strange beast." (*Maurer*, *supra*, 32 Cal.App.4th at p. 1126.) "'[I]t applies only to offenders who are *motivated by* an unnatural or abnormal sexual interest or intent.'

[Citation.]" (*Id.* at p. 1127.) Because the charged crime required proof of the unnatural or abnormal sexual interest of the defendant, the jury instruction setting forth the elements of the offense and the motive instruction were in direct conflict, thus requiring reversal. (*Id*. at pp. 1125, 1127.) Unlike section 647.6, section 186.22, subdivision (b)(1) requires proof of the defendant's *intent* to further gang activity, not the motivation behind the intent.

In *People v. Fuentes* (2009) 171 Cal.App.4th 1133, the jury convicted Fuentes of a number of felonies based upon a shooting and found the attached gang enhancements true. (*Id*. at p. 1137.) Like defendant, Fuentes contended the court gave conflicting jury instructions when it instructed the jury using CALCRIM pattern instructions on motive and the gang enhancement. (*Id*. at pp. 1135, 1139.) The *Fuentes* court rejected the argument and concluded "[a]n intent to further criminal gang activity is no more a 'motive' in legal terms than is any other specific intent. We do not call a premeditated murderer's intent to kill a 'motive,' though this action is motivated by a desire to cause the victim's death. Combined, the instructions here told the jury the prosecution must prove that Fuentes intended to further gang activity but need not show what motivated his wish to do so. This was not ambiguous and there is no reason to think the jury could not understand it." (*Id*. at pp. 1139-1140.) "By listing the various 'intents' the prosecution was required to prove (the intent to kill, the intent to further gang activity), while also saying the prosecution did not have to prove a motive, the instructions told the jury where to cut off the chain of reasons. This was done without saying anything that would confuse a reasonable juror." (*Id*. at p. 1140.) We agree and find no error.

C. *Hobbs Review*

The police searched defendant's residence on December 14, 2006 pursuant to a search warrant. Counts four, five, six, and seven were each based upon evidence

seized during the search. Additionally, photographs of gang members and other evidence obtained during the search were used throughout the trial. Prior to trial, defendant brought a motion to unseal the affidavit to the search warrant (*People v. Hobbs* (1994) 7 Cal.4th 948) in conjunction with a motion to quash and traverse the search warrant. On May 2, 2008, the court conducted an in camera hearing at which the prosecutor and defense counsel were present. The court reviewed the sealed affidavit and examined one of the affiants, Anaheim Police Officer Frank Hale. The court found the affidavit was properly sealed and ordered the affidavit resealed at the conclusion of the hearing. The court also denied the motions to traverse and quash the warrant. Defendant requests that we conduct an independent review (*People v. Hobbs*, *supra*, 7 Cal.4th 948) of the trial court's rulings resealing the affidavit and denying the motions to quash and traverse the warrant.

We issued an order directing the superior court clerk to transfer to this court the search warrant and the affidavit in support of the warrant. We have reviewed the search warrant, the sealed affidavit, and the sealed reporter's transcript of the in camera hearing on defendant's motions to quash and traverse the search warrant. Based upon our review of these materials, we find the trial court properly concluded disclosure could expose the identity of the informants and that the affidavit should remain sealed. Additionally, we conclude "that it was not reasonably probable defendant could prevail on [his] motions to traverse or quash the search warrant. The motions were therefore properly denied." (*People v. Hobbs*, *supra*, 7 Cal.4th at p. 977.)

Defendant further requests that we remand the matter to the trial court because the court did not question the informant in the in camera hearing and therefore could not determine whether the informant was a material witness as to the issue of guilt or innocence of the defendant. The Attorney General does not oppose defendant's request for remand. However, defendant fails to cite to anything in the record showing he made a motion to disclose the identity of a confidential informant as was done in

People v. Hobbs, *supra*, 7 Cal.4th at pp. 975-976. Even assuming defense counsel's statement during the examination of Hale in the in camera hearing, that counsel was concerned about whether any informant was a material witness to the alleged stabbing suffices, the trial court would not have erred had it denied the motion. The stabbing incident is not mentioned in the affidavit and there is no reason to suspect any informant possessed any information about that incident.

Defendant's reliance upon *People v. Ruiz* (1992) 9 Cal.App.4th 1485, for the proposition that the informant must be examined during an in camera hearing on a motion to disclose the informant's identity is misplaced. In that case, Ruiz, charged with selling methamphetamine, made a motion to disclose the identity of the confidential informant who was an eyewitness to the charged sale. (*Id*. at p. 1487.) The appellate court concluded that "[a]lthough there is no general requirement that an informant must be present or testify at an in camera hearing on a motion to disclose the informant's identity [citation], . . . the CI's in camera testimony was essential . . . because defendant had established the CI was an eyewitness to the alleged drug transaction." (*Id*. at p. 1489.) Here, absent a showing an informant was an eyewitness to the stabbing, a showing defendant did not make, the court was not required to question any informant to determine whether that informant was a material witness to defendant's guilt or innocence.

Neither does the record show the court ever made a ruling on a motion to disclose the identity of an informant. Defendant was obligated to obtain a ruling. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 556 [defendant obligated to obtain ruling on deferred issue]; see *People v. Thompson* (1990) 221 Cal.App.3d 923, 931-932 [duty to obtain unambiguous ruling on motion to suppress evidence pursuant to § 1538.5].) When the court announced its decision denying the motion to unseal the search warrant affidavit and the motions to quash and traverse the search warrant, the court asked defense counsel, "Do I need to do anything else?" Defense counsel said "no."

Defendant failed to obtain a ruling on a motion to disclose the identity of a confidential informant. If such a motion had been made, the issue is forfeited. Accordingly, we find no error.

III

DISPOSITION

The gang enhancement allegation attached to count four is reversed. The judgment is affirmed in all other respects. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.